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NOS. 91-543; 91-558; 91-563
Consolidated

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1991

THE STATE OF NEW YORK, THE COUNTY OF ALLEGANY, and THE COUNTY OF CORTLAND, NEW YORK

Petitioners,

V.

THE UNITED STATES OF AMERICA; JAMES D. WATKINS, as Secretary of Energy; IVAN SELIN, as Chairman of the United States Nuclear Regulatory Commission; THE UNITED STATES NUCLEAR REGULATORY COMMISSION; ADMIRAL JAMES B. BUSEY, IV, as Acting Secretary of Transportation; and WILLIAM P. BARR, as United States Attorney General,

Respondents,

THE STATE OF WASHINGTON; THE STATE OF NEVADA; and THE STATE OF SOUTH CAROLINA,

Intervenors-Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, STATES OF WASHINGTON, NEVADA AND SOUTH CAROLINA, IN OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* BY THE COUNCIL OF STATE GOVERNMENTS

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Pursuant to Rule 37.4 of the rules of this Court, Respondents, the states of Washington, Nevada, and South Carolina, object to the motion of the Council of State Governments (CSG) for leave to file an *amicus curiae* brief in support of Petitioners in this matter.

Contrary to the implication underlying the statement of counsel for the CSG, the *amicus curiae* brief submitted does not have the support of "all 50 state governments and numerous elected and appointed officials throughout the United States." *Motion for Leave to File Brief*, pp. 1-2.

The action to file this *amicus* brief was generated by the Council of State Government's legal committee, which is made up of only eight members. The current Chair of the Council of State Governments, Governor Zell Miller of Georgia, and the current Chair-Elect, Governor Edgar of Illinois, abstained from voting for the submission of this *amicus* brief.

The Low-Level Radioactive Waste Policy Act of 1980 and its 1985 Amendments were a product of the unanimity of all 50 states. The National Governors Association, the National Council of State Legislatures, and the State Planning Council on Radioactive Waste Management all played a critical role in forging agreement among all the states and persuading Congress to adopt the 1980 Act and its 1985 Amendments at the behest of the states.

The states of Washington, South Carolina, and Nevada were not provided any opportunity to discuss and debate the CSG's action to submit this *amicus* brief. It is not appropriate for the CSG to submit an *amicus* brief on the basis of a recommendation of a committee of eight members. The *amicus curiae* brief does not represent the views of the National Governors Association, the National Conference of State Legislatures, the State Planning Council on Radioactive Waste Management, the Legal Center for State and Local Governments, or the 50 sovereign state governments. The

amicus curiae brief only represents the views of an eight-member committee of the CSG.

Accordingly, the Respondents, states of Washington, Nevada, and South Carolina, by and through its undersigned counsel, respectfully request that the motion of the Council of State Governments for leave to file an *amicus curiae* brief in support of Petitioners be denied.

Respectfully submitted,

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